

1 KAMALA D. HARRIS
Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 DESIREE I. KELLOGG
Deputy Attorney General
4 State Bar No. 126461
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2996
7 Facsimile: (619) 645-2061
Attorneys for Complainant

8
9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2013-528

13 **ANABEY SILVA SILVA,**
14 **AKA ANABEY SILVA,**
AKA ANABEY VERGARA
15 **1184 North Citron Street, Apartment 203**
Anaheim, CA 92801

FIRST AMENDED ACCUSATION

16 **Registered Nurse License No. 686587**

17 Respondent.

18
19 Complainant alleges:

20 **PARTIES**

21 1. Complainant Louise R. Bailey, M.Ed., RN brings this First Amended Accusation
22 solely in her official capacity as the Executive Officer of the Board of Registered Nursing
23 (Board), Department of Consumer Affairs.

24 2. On or about August 16, 2006, the Board issued Registered Nurse License Number
25 686587 to Anabey Silva Silva, also known as Anabey Silva and Anabey Vergara (Respondent).
26 Respondent has also been known as Ana Bey Silva Calderon and Ana Bey Calderon. The
27 License was in full force and effect at all times relevant to the charges brought herein and will
28 expire on March 31, 2014, unless renewed.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

2
3
4

5
6
7
8

9
0
1
2
3

4

5

6

- 8
-
- 9

21

22
23
24

1

27

28

1 person who holds a license, upon the ground that the applicant or the licensee has
2 been convicted of a crime substantially related to the qualifications, functions, and
3 duties of the licensee in question, the record of conviction of the crime shall be
4 conclusive evidence of the fact that the conviction occurred, but only of that fact,
5 and the board may inquire into the circumstances surrounding the commission of
6 the crime in order to fix the degree of discipline or to determine if the conviction is
7 substantially related to the qualifications, functions, and duties of the licensee in
8 question.

9 As used in this section, "license" includes "certificate," "permit,"
10 "authority," and "registration."

11 9. Section 2761 of the Code states:

12 The board may take disciplinary action against a certified or licensed
13 nurse or deny an application for a certificate or license for any of the following:

14 (a) Unprofessional conduct, which includes, but is not limited to, the
15 following:

16

17 (f) Conviction of a felony or of any offense substantially related to the
18 qualifications, functions, and duties of a registered nurse, in which event the
19 record of the conviction shall be conclusive evidence thereof.

20

21 10. Section 2762 of the Code states:

22 In addition to other acts constituting unprofessional conduct within the
23 meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct
24 for a person licensed under this chapter to do any of the following:

25

26 (b) Use any controlled substance as defined in Division 10 (commencing
27 with Section 11000) of the Health and Safety Code, or any dangerous drug or
28 dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or
in a manner dangerous or injurious to himself or herself, any other person, or the
public or to the extent that such use impairs his or her ability to conduct with safety
to the public the practice authorized by his or her license.

(c) Be convicted of a criminal offense involving the prescription,
consumption, or self-administration of any of the substances described in
subdivisions (a) and (b) of this section, or the possession of, or falsification of a
record pertaining to, the substances described in subdivision (a) of this section, in
which event the record of the conviction is conclusive evidence thereof.

(d) Be committed or confined by a court of competent jurisdiction for
intemperate use of or addiction to the use of any of the substances described in
subdivisions (a) and (b) of this section, in which event the court order of
commitment or confinement is prima facie evidence of such commitment or
confinement.

. . . .

11. Section 2765 of the Code states:

A plea or verdict of guilty or a conviction following a plea of *nolo contendere* made to a charge substantially related to the qualifications, functions and duties of a registered nurse is deemed to be a conviction within the meaning of this article. The board may order the license or certificate suspended or revoked, or may decline to issue a license or certificate, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment.

REGULATORY PROVISIONS

12. California Code of Regulations, title 16, section 1444, states:

A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:

- (a) Assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code Section 11160.
- (b) Failure to comply with any mandatory reporting requirements.
- (c) Theft, dishonesty, fraud, or deceit.
- (d) Any conviction or act subject to an order of registration pursuant to Section 290 of the Penal Code.

13. California Code of Regulations, title 16, section 1445 states:

(b) When considering the suspension or revocation of a license on the grounds that a registered nurse has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his/her eligibility for a license will consider the following criteria:

- (1) Nature and severity of the act(s) or offense(s).
- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or offense(s).
- (4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

///

1 (5) If applicable, evidence of expungement proceedings pursuant
2 to Section 1203.4 of the Penal Code.

3 (6) Evidence, if any, of rehabilitation submitted by the licensee.
4

5 **COST RECOVERY**

6 14. Section 125.3 of the Code provides, in pertinent part, that the Board may request
7 the administrative law judge to direct a licensee found to have committed a violation or
8 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
9 and enforcement of the case.

10 **FIRST CAUSE FOR DISCIPLINE**

11 **(Apr. 27, 2011 Conviction for Driving With BAC .08 Percent or More On January 9, 2011)**

12 15. Respondent has subjected her registered nurse license to disciplinary action under
13 Code sections 490 and 2761, subdivision (f), in that she was convicted of a crime that is
14 substantially related to the qualifications, functions, and duties of a registered nurse. The
15 circumstances are as follows:

16 a. On April 27, 2011, in a criminal proceeding entitled *The People of the*
17 *State of California v. Anabey Silva*, in Los Angeles County Superior Court, Bellflower
18 Courthouse, case number 1BF00947, Respondent pled *nolo contendere* and the Court found her
19 guilty of violating Vehicle Code (VC) section 23152, subdivision (b), driving with a BAC of
20 0.08 percent or more (0.15 percent), a misdemeanor. Respondent admitted and the court found
21 true the allegation that pursuant to VC section 23540, within ten years of violating VC section
22 23152, subdivision (b), mentioned above, on March 28, 2005, she committed a separate violation
23 of VC section 23152, subdivision (b), driving with a BAC of 0.08 percent or more, a
24 misdemeanor resulting in a conviction on June 2, 2005, in case number 5DW03212, detailed in
25 paragraph 21. A charge for violating VC section 23152, subdivision (a), DUI, a misdemeanor
26 with similar enhancements was dismissed pursuant to a plea bargain.

27 b. As a result of the conviction, on April 27, 2011, Respondent was granted
28 48 months summary probation and ordered to surrender on May 27, 2011 to serve 96 hours in the
Los Angeles County Jail, with credit for 24 hours served and to pay all applicable fees, fines and

1 restitution and to enroll and attend a multiple offender alcohol program. Respondent was further
2 ordered not to drive without a valid driver's license.

3 c. The facts that led to the conviction are that at or about 11 p.m. on January
4 8, 2011, Respondent consumed two Cadillac Margaritas at a bar in Anaheim, California. At or
5 about 1 a.m. on January 9, 2011, Respondent was on her way to a casino in Hawaiian Gardens,
6 California when she was spotted by an officer of the California Highway Patrol driving
7 erratically along the San Gabriel River Freeway. During an enforcement stop, the officer
8 immediately noticed the smell of alcohol coming from Respondent's vehicle. The officer also
9 noticed Respondent's bloodshot watery eyes. Respondent failed the field sobriety tests (FST)
10 that were explained by the officer. In three preliminary alcohol screening (PAS) attempts,
11 Respondent registered .156 percent, .174 percent, and .149 percent BAC.

12 SECOND CAUSE FOR DISCIPLINE

13 (June 11, 2011 Conviction for Driving Without a Valid License May 9, 2011)

14 16. Respondent has subjected her registered nurse license to disciplinary
15 action under Code sections 490 and 2761, subdivision (f), in that she was convicted of a crime
16 that is substantially related to the qualifications, functions, and duties of a registered nurse. The
17 circumstances are as follows:

18 a. On June 24, 2011, in a criminal proceeding entitled *The People of the State of*
19 *California vs. Anabey Silva*, in Orange County Superior Court, North Justice Center, case number
20 11NM10131, Respondent was convicted on her plea of guilty to violating VC section 12500(a),
21 driving a motor vehicle upon a highway without holding a valid driver's license, a misdemeanor.
22 Charges for violating VC sections 14601.2, subdivision (a), driving a motor vehicle knowing that
23 her privilege was suspended and revoked for a prior DUI violation and 14601.5, subdivision (a),
24 driving a motor vehicle knowing that her driving privilege was immediately suspended and
25 revoked pursuant to VC section 13353.2, for driving with a BAC of .08 percent or more,
26 misdemeanors, and VC section 23123, subdivision (a), driving while using a wireless telephone,
27 an infraction, were dismissed pursuant to a plea bargain. As part of her plea agreement,
28 Respondent admitted that she "drove a motor vehicle upon a highway without a valid driver's

1 license.”

2 b. As a result of the conviction, on June 24, 2011, Respondent was sentenced to three
3 years informal probation and ordered to pay all applicable assessments, surcharges, fines, and
4 fees.

5 c. The facts that led to the conviction are that on May 9, 2011, Respondent was seen
6 by an officer of the Anaheim Police Department holding a cellular telephone to her right ear
7 while driving in Anaheim, California. During an enforcement stop, the officer learned that
8 Respondent’s driving privileges were suspended and revoked on April 27, 2011 for driving with a
9 BAC of .08 percent or more.

10 **THIRD CAUSE FOR DISCIPLINE**

11 **(Unprofessional Conduct - Use Of Alcohol in a Dangerous Manner)**

12 17. Respondent has subjected her registered nurse license to disciplinary action under
13 Code section 2762, subdivision (b), in that on January 9, 2011, as described in paragraph 15,
14 above, she used alcoholic beverages to an extent or in a manner that was potentially dangerous
15 and injurious to herself and to others when she operated a motor vehicle with a BAC of .08
16 percent or more.

17 **FOURTH CAUSE FOR DISCIPLINE**

18 **(Unprofessional Conduct - Conviction Of an Alcohol Related Criminal Offense)**

19 18. Respondent has subjected her registered nurse license to disciplinary action under
20 Code section 2762, subdivision (c), in that on April 27, 2011, as described in paragraph 15,
21 above, Respondent was convicted of a criminal offense involving the consumption of alcohol.

22 **FIFTH CAUSE FOR DISCIPLINE**

23 **(Unprofessional Conduct – Committed for Intemperate Use of Alcohol)**

24 19. Respondent has subjected her registered nurse license to disciplinary action under
25 Code section 2762, subdivision (d), in that on May 27, 2011, as described in paragraph 15,
26 above, Respondent was committed to the custody of the Los Angeles County Jail for intemperate
27 use of alcohol.

DISCIPLINARY CONSIDERATIONS

20. Pursuant to California Code of Regulations, title 16, section 1445, to determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges:

a. On May 16, 2002, in a criminal proceeding entitled *The People of the State of California vs. Anabey Silva*, in Los Angeles County Superior Court, Compton Courthouse Judicial District, case number TA064386, Respondent was convicted on her plea of *nolo contendere* of violating Penal Code (PC) section 470, subdivision (D), forgery, a misdemeanor pursuant to PC section 17, subdivision (b)(4). Charges for violation of PC sections 487, subdivision (a), grand theft; 470, subdivision (d), forgery; and 664-487, subdivision (a), attempted grand theft, felonies, were dismissed pursuant to a plea bargain.

b. As a result of the conviction, on May 16, 2002, Respondent was granted three years summary probation and sentenced to serve three days in the Los Angeles County Jail, with credit for three days served. Respondent was also ordered to perform 80 hours of community service and pay restitution and fines. On or about March 10, 2004, upon completion of all probation terms, the case was dismissed under PC1203.4.

c. The facts that led to the conviction are that on February 8, 2002, Respondent cashed a stolen check in the amount of \$4,800.00. On February 9, 2002, Respondent attempted to deposit a stolen check in the amount of \$4,000.00 and was subsequently arrested. Respondent disclosed this conviction on her application for licensure.

21. Pursuant to California Code of Regulations, title 16, section 1445, to determine the degree of discipline, if any, to be imposed on Respondent, Complainant further alleges:

a. On June 2, 2005, in a criminal proceeding entitled *The People of the State of California v. Anabey Silva*, in Los Angeles County Superior Court, Downey Courthouse Judicial District, case number 5DW03212, Respondent was convicted of violating Vehicle Code (VC) section 23152, subdivision (b), driving with a blood alcohol content (BAC) of 0.08 percent or more, a misdemeanor. A charge for violation of VC section 23152, subdivision (a), driving under the influence of alcohol (DUI), a misdemeanor, was dismissed pursuant to a plea bargain.

1 b. As a result of the conviction, Respondent was granted 36 months
2 summary probation, ordered to pay all applicable fees, fines and restitution and to enroll and
3 complete a three month first offender alcohol program.

4 **PRAYER**

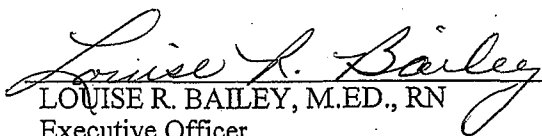
5 WHEREFORE, Complainant requests that a hearing be held on the matters herein
6 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

7 1. Revoking or suspending Registered Nurse License Number 686587, issued to
8 Annabel Silva Silva, also known as Annabel Silva, Annabel Verger, Ana Bye Silva Calderon,
9 and Ana Bye Calderon;

10 2. Ordering Annabel Silva Silva, RN to pay the Board of Registered Nursing the
11 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
12 Professions Code section 125.3;

13 3. Taking such other and further action as deemed necessary and proper.
14
15
16

17 DATED: FEBRUARY 21, 2013


LOUISE R. BAILEY, M.ED., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

21 SD2012703954/70628665.doc
22
23
24
25
26
27
28